IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6458 OF 2004

Sudam Namdeo Nagaonkar & ors ... Petitioners

Versus

State of Maharashtra & ors .Respondents

Mr. H.V.Kode for Petitioner
Mr.R.D.Rane A.G.P. for Respondent nos. 1 to 5.
Ms Varsha Palav for Respondent nos. 7 to 14.

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CORAM : A.P.Shah and
S.C.Dharmadhikari, JJ
DATE: 2nd November, 2004

P.C.

1. Heard Advocates.

2. The petitioner has filed this petition challenging the grant of land bearing revisional survey Nos. 187/1A,2A &3A and 188/4, Valivade, Gandhinagar, Taluka Karvir, District Kolhapur (hereinafter referred to as the said land) to the

7th respondent. The 7th respondent is the widow of one Harchomal Dembani. The father-in-law of the 7th respondent Jamiatmal Dembani was a refugee from Pakistan and after partition came to India and settled in Kolhapur. By an order dated 3rd April, 1954 the State of Maharashtra allotted the said land to Jamiatmal on yearly lease with effect from 1st January, 1954. Jamiatmal died sometime in 1964 and thereafter the land was shown in the name of Harchomal. It appears that in 1980, the Collector sought to resume the land alleging certain breach of conditions of the lease. The husband of the 7th respondent filed a civil suit bearing Civil Suit no. 357 of 1980 and in that suit interim order of status quo was passed.

3. A writ petition was also filed being Writ Petition No. 3016 of 1989 by Harchomal Dembani and this Court vide an order dated 13th December, 1996 held that the petitioner therein was in possession of the land in question in the said petition prior to 1965 and was entitled to regularisation of his occupation. The Court held that the direction of the Secretary to reopen the case to find out the basis on which the petitioner therein claimed ownership of the lands was totally misdirected and the order of the Secretary was set aside.

4. Thereafter, the prayer for regularisation was

considered by the State of Maharashtra and by an order dated 31st May, 1999 the said land has been allotted to the 7th respondent subject to conditions mentioned in the said order. Pursuant to the order passed by the State of Maharashtra, the Collector of Kolhapur has placed the 7th respondent in possession of the land allotted to her.

5. It appears that the present petitioners were having their temporary structures in the said property adjoining the road. It further appears from the record that the petitioner nos. 2,3, 5 to 8 and 10 to 11 accepted the offer for monetary compensation and removed their structures. It is not clear whether the remaining petitioners were paid any monetary compensation for their structures but it seems to be an admitted position that their structures were also removed. Learned counsel appearing for the petitioners submitted that the petitioners were on the government land prior to the cut-off date i.e.1st January, 1995 and therefore in view of the Government Resolution dated 4th April, 2002 they are entitled for alternative accommodation. The State Government is directed to consider the case of the petitioners in the light of the provisions of the said G.R. and pass appropriate orders in accordance with law within a period of three months from today from the date of this order. We make it clear that the benefit of

the G.R. shall not be denied to the petitioners solely on the ground that the petitioners have received monetary compensation from the 7th respondent and their case will be considered on its own merits and in accordance with law.

6. Petition is disposed of accordingly.

A.P.SHAH, J

S.C.DHARMADHIKARI, J